

October 12, 2006

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: American-Arab Anti-Discrimination Committee

Date of Filing: July 5, 2006

Case Number: TFA-0168

This Decision concerns an Appeal that was filed by the American-Arab Anti-Discrimination Committee (ADC) in response to a determination that was issued to it by the Director of the Department of Energy's (DOE) Policy and Internal Controls Management Office (hereinafter referred to as "the Director"). In that determination, the Director replied to a request for documents that ADC submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the Department of Energy (DOE) in 10 C.F.R. Part 1004. The Director informed ADC that the DOE's search had failed to identify any documents that were responsive to ADC's request. This Appeal, if granted, would require that we remand this matter to the Director for another search.

I. Background

In a FOIA request to the Federal Bureau of Investigation (FBI), the Department of Justice (DOJ) and the DOE, ADC asked that these agencies release

information relating to the FBI and [DOE's] Nuclear Emergency Support Team (NEST) nuclear surveillance program. Specifically, ADC requests that it be provided with the addresses of the mosques, homes, businesses, and warehouses, and all other facilities, in the greater Washington, DC area where the nuclear surveillance program has been conducted [since] September 11, 2001

ADC FOIA request at 1.

In his determination letter, the Director characterized ADC's request as being "for a copy of the addresses of mosques, homes, businesses, warehouses and other facilities in the greater Washington, DC area where the nuclear surveillance program" has been conducted since September 11, 2001. Determination letter at 1. The Director said that no responsive documents could be located.

In its Appeal, ADC contends that the Director improperly narrowed the scope of the search for responsive documents. The requester states that it sought access to all information about the nuclear surveillance program, and not just the names and addresses of the locations at which surveillance took place. Furthermore, ADC argues that the DOE's active involvement in the program makes it highly unlikely that an adequate search would produce no responsive documents.

II. Analysis

We have stated on numerous occasions that a FOIA request deserves a thorough and conscientious search for responsive documents, and we have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Butler, Vines and Babb, P.L.L.C.*, 25 DOE ¶ 80,152 (1995). The FOIA, however, requires that a search be reasonable, not exhaustive. "[T]he standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials." *Miller v. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord, Weisberg v. Department of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984). The fact that the results of a search do not meet the requester's expectations does not necessarily mean that the search was inadequate. Instead, in evaluating the adequacy of a search, our inquiry generally focuses on the scope of the search that was performed. *Information Focus On Energy*, Case No. VFA-0353, 26 DOE ¶ 80,240 (1997).

In order to determine whether the search conducted was adequate, we contacted the Director's Office. We were informed that the request was referred to the Office of Emergency Response. We contacted the FOIA Officer in that Office who co-ordinated the search, and were told that, despite the wording of the Director's determination letter, the search conducted was for any information concerning the surveillance program, that all nine offices of the Office of Emergency Response were searched, and that although DOE personnel did take part in the surveillance, the operations were conducted under the auspices of the FBI, and any responsive documents were likely to be located in the facilities of that agency. *See* memorandum of October 3, 2006 telephone conversation between Robert Palmer, Staff Attorney, Office of Hearings and Appeals, and Walter Chrobak, Office of Emergency Response. Based on the information before us, we conclude that the search for responsive documents was adequate.

It Is Therefore Ordered That:

- (1) The Freedom of Information Act Appeal filed by the American-Arab Anti-Discrimination Committee, OHA Case Number TFA-0168, is hereby denied.
- (2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district

in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

George B. Breznay
Director
Office of Hearings and Appeals

Date: October 12, 2006